



INFO-GRAM QUARTERLY NEWSLETTER

Keith Kelly, Commissioner, DLI; Jim Brown, Administrator, BSD;
Lisa Addington, Bureau Chief, HCLB

Department of Labor & Industry Business Standards Division Health Care Licensing Bureau

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AUTUMN GLORY



It is harvest time. Gardens yielded a cornucopia of fruits and vegetables. Canners have been in the 'sweat shop' preserving their bounty to be savored when the winter winds chill the body, releasing an aroma mixed with the memory of sun-filled summer days. Flowers hung to dry now appear as scented potpourri. Barns and silos are brimming with winters provision for livestock. Haylofts tempt children to make forts and play on the pokey, twine-bound bales, and beckon the booming voice of dad saying, "Get off those hay bales".

It is the fall of our reorganization, a time to pause, look back and evaluate, then recognize the tasks that are ahead. The HCLB has a new Unit 2 supervisor, Marilyn Kelly-Clark. Marilyn joined the team on August 23, 2004. Ms. Kelly-Clark replaces Jill Caldwell who became the Business and Occupational Licensing Bureau (BOLB) Bureau Chief.

The Department, division, bureau and boards are preparing for the 2005 Legislative Session. Budgets have been prepared and submitted for committee review.

Winter promises to be a "blizzard" of activity providing continual improvement for the public we serve. The HCLB is comprised of staff and board members who know their board or program and work together as a team to meet the purpose of the board by protecting the public through regulating the profession and educating the public on the regulatory process

DOTTING OUR I'S AND WATCHING OUR P'S AND Q'S

State employees and board members have rules of conduct to follow just as licensees have scope of practice guidelines and unprofessional conduct rules.

Board Members are appointed by the Governor and confirmed by the Senate during a Legislative Session. As an officer of the State of Montana, the law requires that board members sign an Oath of Office and submit it to the Secretary of State's office.

How is a member appointed to a Board? State associations can recommend individuals for appointment or individuals may make application to serve on a board. Letters, applications, and recommendations may electronically submitted or mailed to the Governor's Office, Board Appointments, Capitol Station, Helena MT 59620. You can suggest a name for board appointments, or apply yourself by going to:

<https://app.discoveringmontana.com/appoint/>

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Summary of 2005 Legislation for the Licensing Bureaus

The two licensing bureaus (Health Care and Business and Occupational) have two pieces of joint legislation. The first is a model act for licensing, and the second is a combined board bill to clean up existing outdated, erroneous or cumbersome statutes, address legislative audit recommendations, adding board members to small boards for Screening Panel purposes, and recommendations for removing the citizenship requirement.

This document will summarize the legislation and provide an overview of the intent. Copies of the draft bills may be found at <http://discoveringmontana.com/dli/bsd/legislation.asp>. The Department welcomes your input on these bills. Direct your questions or comments to Lisa Addington, 841-2303, (liaddington@mt.gov) or Jill Caldwell, 841-2302, (jcaldwell@mt.gov).

The Model Act

HB 182, Revise professional and occupational licensing laws, is an attempt to clarify duties of the Department of Labor and Industry and the Boards and to streamline and standardize licensure processes. This bill is a direct result of House Joint Resolution 20 (HJR20) from the last Legislative Session (2003). HJR20 called for a performance audit of the Department's licensing boards and programs. The Legislative Audit Division completed the audit in May 2004. Five aspects of professional and occupational licensing were examined:

- Licensing fees and board funds
- Board disciplinary activities
- Department administrative procedures
- Public and professional representation on licensing boards
- Education and experience requirements applied as a condition of licensure

The audit findings are available on the State's website: <http://discoveringmontana.com/dli/bsd/license/audit.asp>.

Broadly, the findings produced the following recommendations:

- Where appropriate, the Department should seek standardization among licensure boards and programs.
- The Department should update and revise administrative policies and procedures.
- The Department should develop and compile reporting standards for management information.
- The Department should seek authority to set uniform administrative service fees that are commensurate with the cost of services.
- The licensing boards should delegate responsibility for review and approval of routine applications to boards staff.
- Renewal dates should be evaluated and redistributed where necessary to manage workflow of the bureaus.
- Continual renewal cycles should be eliminated in favor of fixed-date renewals.
- Documentary verification of continuing education hours should be performed on a random audit basis and not on every renewal applicant.
- The Department should develop model administrative rules to increase the consistency in the disciplinary process.
- The Department should develop standardized procedures for compliance inspection.

With that in mind, the Department has proposed the Model Act for Licensure. The Act will clarify the duties of the Departments and duties of the boards.

The Act also clarifies that the following duties are the Department's:

- Establishing and providing all administrative, legal and clerical services to the boards;
- processing applications, issuing routine licenses, renewing licenses;
- establishing the qualifications of applicants to take the licensure examination for programs without a board;
- determining the standards, contents, types and methods of examinations required for licensure or reinstatement, examine applicants, require continuing education for licensure or renewal of licensure, so long as the continuing education is not a precondition of renewal, and no more than 20% of renewed licensees are subjected to an audit of their continuing education for programs without a board;
- setting administrative fees, depositing funds and monitoring boards' and programs' cash balances;
- preparing agendas;
- standardizing policies and procedures and streamlining administrative processes;
- contracting for or grading examinations;
- investigating complaints or performing inspections; and,
- hiring, supervising, establishing qualifications for and terminating staff.

The Act assigns the following duties to the boards:

- set and enforce standards and rules governing the licensing, certification, registration and conduct of the members of the particular profession or occupation;
- establish the qualifications of applicants to take the licensure examination;
- determine the standards, contents, types and methods of examination required for licensure or reinstatement, examine applicants, require continuing education for licensure or renewal

of licensure, so long as the continuing education is not a precondition of renewal, and no more than 20% of renewed licensees are subjected to an audit of their continuing education;

- sit in judgment in hearings for suspension, revocation or denial of a license;

- suspend, revoke or deny a license after a hearing;

- pay its pro rata share of the Department's expenses;

- consult with the Department before initiating a program expansion, under existing legislation to determine the availability of adequate resources; and

- issue subpoenas for information needed for the board's work.

The Act determines that a license is lapsed if not renewed by the renewal date set by the Department.

Once lapsed, the license may be reactivated within 45 days by submitting the completed renewal form, paying a renewal fee and a late penalty fee, and complying with renewal requirements. A licensee

practicing during this time is not considered to be practicing without a license. If the licensee allows more than 45 days after the renewal date to pass, the license is considered expired. Once the license has expired, the licensee may reactivate the license within two years by submitting a renewal form, paying the renewal and late penalty fee and complying with renewal requirements. If the licensee practices during this time, the licensee is considered to be practicing without a license.

The Act defines the following new terms:

- Administrative fee means a fee established by the Department to cover the cost of routine processing services. These fees are those charged for duplicate licenses, verifications, address changes, late penalty fees, etc.

- Board fee means a fee established by the board to cover the cost of program areas and any other board specific and legislatively mandated fees. These fees are licensure fees, examination fees and renewal fees.

The Department's Combined Bill

HB 203, Clarify responsibility of boards and department of labor and industry, also responds to several issues described in the legislative audit. The bill:

- Adds two members each to the Boards of Sanitarians, Athletics and Public Accountants. The limited number of members on these boards has hindered the Boards' ability to have adequate membership on screening and adjudication panels.

- Exempts a physician or dentist licensed in another state and employed by the Federal government from the licensure requirement to practice.

- Recognizes the Board of Nursing's Nurse Midwives' autonomy and eliminates the need for physician supervision.

- Requires that prescriptions may not be refilled for more than one year from the date the prescription was written.

- Renders licensed practical nurse application fees nonrefundable (Registered nurse application fees have been nonrefundable for several years)

- Eliminates the requirement that the Board of Medical Examiners approves courses for the Board of Optometry

- Requires all fines imposed by a board be deposited in the State General Fund

- Allows physical therapists to use a patient's medication obtained in another state

- Exempts a person operating an X-Ray machine for industrial purposes from the licensure statute

- Exempts an individual providing consultative psychological services for ten days or less from the licensure statute and updates terms and titles used in the field of psychology

- Exempts a veterinarian licensed in another state to practice on an occasional case in Montana Board of Veterinarian Medicine

- Allows for the licensure of firearms instructors

- Eliminates the requirement that a resident manager or qualifying agent of a private security company use certified mail to notify the Board of changes

- Removes language in any board statute that describes, "forms prescribed by the board." (The Department develops forms).



HCLB WELCOMES NEW UNIT 2 SUPERVISOR, MARILYN KELLY-CLARK

Ms. Kelly-Clark came to Helena from Billings with her husband Dennis and two daughters. Marilyn has worked in various medical administration positions since 1979. Most recently, Marilyn worked at Rocky Mountain College as the Admissions Officer for the School of Allied Health. Prior

to her return to Billings, she was the Business Manager for the Lake Washington Sports Clinic in Seattle for six years where she worked for five partners and managed a staff of 18. She worked in Silverdale, Washington for three years managing the Behavioral Health Clinic, a psychiatric clinic with 7 therapists. Additionally, she worked as Office Manager for the Gallatin County Alcohol & Drug Program in Bozeman, and St. Patrick's Hospital in Missoula where she was a Financial Counselor for patients experiencing financial difficulties.

On August 23, 2004, Supervisor Kelly-Clark was introduced to the Unit 2 staff and the boards in her unit. Marilyn met with her staff one on one to be apprised of board business and activities and to build a rapport with the Unit 2 team. Her supervision includes the Board of Pharmacy with Becky Deschamps, R.Ph. Executive Director; Nancy Dunagan Licensing Specialist; and Bill Sybrant, R.Ph., Compliance Officer. Marilyn will assume the duties of Program Manager for the Board. In addition to Pharmacy, Marilyn will supervise the Boards of Nursing Home Administrators and Physical Therapy under Program Manager Linda Grief; the Boards of Hearing Aid Dispensers, Occupational Therapy Practice,

Respiratory Care Practitioners, Radiologic Technologists, and Speech-Language Pathologists & Audiologists under Program Manager Helena Lee. Brian Bowers, Licensing Specialist maintains the application pool for all of these boards. Also included in Unit 2 is the Board of Nursing with Liz Carney and Jennifer Billman, Licensing Specialists. "Andy" Anita Carter was recently hired as the Program Manager and Sandra Dickenson was hired as the Board of Nursing's Executive Director. New hire Rebecca McTaggart came on board September 20th as a Licensing Specialist and will work jointly with the Board of Nursing and the Boards of Optometry and Dentistry as a Licensing Specialist.

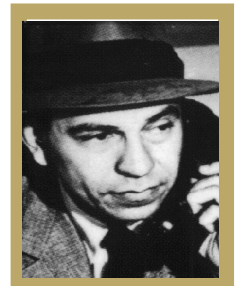
Marilyn encourages an open door policy, preferring mediation versus confrontation. Marilyn's rule of thumb, "If something is troubling you, will it matter in five years? In other words, don't sweat the small stuff. I hope I will be able to bring everyone into a sphere of communication and cooperation. I look forward to facilitating regular Unit 2 meetings in the near future."

Ms. Kelly-Clark received her Political Science and History degree in 1978 from the University of Montana, Missoula, with a Minor in Art History. Marilyn enjoys historical research; we suspect she will find the legislative and rule making process whetting her appetite rather than taxing her mental capabilities. "Customer service is the same whether it is a state agency or private sector. I am sensitive to the use of licensee's dollars and also sensitive to the obligation of government to protect the public from unqualified practice." Supervisor Kelly-Clark is happy to join the HCLB team, anticipating her position to be fulfilling and interesting.



RON BURNS BRUCE DUENKLER BRENT JONES

"Just the Facts, Ma'am, Just the Facts" - Seargent Joe Friday



GROUP INVESTIGATOR INTERVIEW

Compliance Unit Supervisor, Becky Salminen, oversees the three investigators in addition to LaVelle Potter, Cristina Medina and Joan Bowers who are involved with the administrative side of the complaint process. To learn more about how to file a complaint go to: <http://www.mt.gov/dli/bsd> or http://www.discoveringmontana.com/dli/bsd/license/bsd_boards/complaints/complaint.asp

Fiscal year 2004, the Health Care Compliance Unit had a total of 582 complaints. One hundred forty four of those complaints were investigated. Our three investigators each have a caseload of about 40-50 investigations in a year. The unit has approximately 44 years of combined experience in the investigator staff.

Ron Burns has spent the majority of his 13 years performing investigations for the Board of Nursing. Ron's initiation to research or investigative information was during graduate school at Montana State University where he was required to compile original research papers. After graduation he went to work for the Department of Commerce. Ron continued to be assigned research projects including analyzing railroad transportation issues.

Bruce Duenkler has been with the state for 22 years, working as an auditor and investigator. He is designated as a "Certified Investigator" by CLEAR and ARELLO. Mr. Duenkler obtained his Bachelor of Science Degree in Secondary Education and Mathematics from New Mexico State University in 1971. He also taught mathematics in Las Vegas, Nevada School District for 9 years.

Brent Jones worked as a Raleigh, N.C. Police Officer, and Wake County, N.C. Investigator for 4 1/2 years prior to coming to work for the state. He worked under a contract with the state for two years before being employed permanently nine years ago.

FAQs ABOUT INVESTIGATORS AND INVESTIGATIONS

Q. What is the difference between an inspector and an investigator?

An inspection is done to ensure the person is licensed correctly for the level or type of work being performed, or the facility meets the minimum regulations of the board. An investigation is an information gathering activity conducted for many different reasons. The purpose of any investigation is to determine and document facts concerning a particular issue so the Board can make an informed and sound decision.

Q. How does an Investigator conduct impartial, fact-finding interviews without bias?

The Investigator maintains control of the interview. When interviewing, the Investigator asks and seeks only factual information. The cases are kept separated and the individuals involved are unknown to the investigator, unless the person has been previously investigated. However, each investigation is approached as a new case and no previous knowledge is carried over from investigation to investigation.

Q. How does an investigative report get to the board or screening panel?

The agencies within the Business Standards Division have a statutory obligation to investigate and resolve allegations of unprofessional conduct and unlicensed practice. Boards accomplish this mission through the efforts of the investigative and legal staff provided by the Department of Labor & Industry and, therefore, rely upon staff to provide timely, accurate and thorough information regarding allegations.

Once the investigation is completed a draft report is prepared by the investigator and presented to the supervising attorney for technical review. The attorney approves and signs off on the final investigation report. The final investigation is then presented to the Board or Screening Panel.

Each investigation report is considered to be protected information under the principle of attorney work product. As such, the report shall not be distributed to third parties unless the supervising attorney expressly waives the privilege and directs the report to be distributed.

Q. What interview techniques are employed?

Investigators employ formatted structured interview techniques while conducting an investigation. The investigators stay apprised of up-to-date interview techniques through continuing education. Some interview techniques are derived from CLEAR and other professional agencies offering classes and, teaching topics such as the soft approach of free-flowing conversation. Some the courses completed by the investigators include, but are not limited to, CLEAR basic and advanced courses, Reid Interview and Slowik's Objective Pre-employment Interviewing, National Counsel of State Boards of Nursing, FSMB (Federation of State Medical Boards), ARELLO (Association of Real Estate Licensing Law Officials), and NAIFA (National Association of Independent Fee Appraisers).

The training, knowledge and expertise of the Investigators helps them avoid confrontational interviews.

Once a complaint has been filed against a licensee or an applicant the complaint and response proceed to the Screening Panel for its review. The Screening Panel is not a trial-like hearing. It is a meeting of certain board members, in order to review and consider the complaint and response.

Once a Screening Panel has reviewed the information, it may take a number of actions: It may dismiss the complaint with or without prejudice; It may direct that the matter be investigated; It may request that a private letter of warning or an information letter be sent to the Respondent; Finally, it may find reasonable cause to believe that unprofessional conduct has occurred.

If an investigation is requested, the complaint case will be assigned to a Board Investigator who, during the course of obtaining further information, may conduct interviews with the Respondent, Complainant, and any other possible witnesses.

If the Screening Panel finds reasonable cause to believe a violation of board laws and/or rules has occurred – that the Licensee or Applicant has committed unprofessional conduct, the particular laws and/or rules, which the Screening Panel believes has been violated, must be specified in the motion of the Screening Panel. Thereafter, the prosecuting attorney, also known as the Department Counsel, will draft and serve a Notice of Proposed Board Action and Opportunity for Hearing upon the Respondent. A Proposed Stipulation to the Respondent may be included with the Notice. All matters pertaining to the complaints are generally considered to be confidential until such time as the Screening Panel makes a reasonable cause finding and a Notice is issued. However, once a Notice is issued to the Respondent, the Notice becomes public information, and may be disclosed to the public.

Once the Respondent receives the Notice, he or she has twenty days in which to contest the proposed action. This is accomplished by requesting an administrative hearing in writing. If an action is contested, it may proceed to a trial-like hearing before an Administrative Hearing Officer. The Hearing Officer will issue a proposed decision for the Adjudication Panel's review. A proposed decision may be rejected, accepted or modified by the Adjudication Panel. In these situations, Board Counsel will advise the Adjudication Panel how it may proceed. The Adjudication Panel's decision is memorialized in a Final Order.

If the Respondent is offered a Stipulation for settlement, he or she may 1) sign, date and return the Stipulation, 2) request a hearing, or 3) work with the Department Counsel for a possible alternative settlement.

A signed Proposed Stipulation proceeds to the Adjudication Panel for approval or rejection. If approved, it becomes part of the Final Order.

If the Respondent defaults - i.e. does not respond to the Notice within the 20 days - the Department Counsel will prepare a Request for Entry of Default for the Adjudication Panel to consider. If the request is granted, a Final Order of Default will be issued and sent to the Respondent.

The complete text of the complaint process and due process rights are located at www.discoveringmontana.com/dli/bsd.

Board Tidbits

Did you know that you can go to [http://laws.leg.state.mt.us/pls/laws05/law0203w\\$.startup](http://laws.leg.state.mt.us/pls/laws05/law0203w$.startup) to view the entire listing of proposed bills for the 2005 Legislative Session.

Did you know that these Statutes apply to Board Members as “Public Officers”?

2-2-103. Public trust — public duty. (1) The holding of public office or employment is a public trust, created by the confidence that the electorate reposes in the integrity of public officers, legislators, and public employees. A public officer, legislator, or public employee shall carry out the individual's duties for the benefit of the people of the state.

2-2-104. Rules of conduct for public officers, legislators, and public employees. (1)..... A public officer, legislator, or public employee may not:

- (b) accept a gift of substantial value or a substantial economic benefit tantamount to a gift:
- (i) that would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties; or
- (ii) that the person knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the person for official action taken.

2-2-102. Definitions. As used in this part, the following definitions apply:

- (3) (a) “Gift of substantial value” means a gift with a value of \$50 or more for an individual.
- (b) The term does not include:
 - (i) a gift that is not used and that, within 30 days after receipt, is returned to the donor or delivered to a charitable organization or the state and that is not claimed as a charitable contribution for federal income tax purposes;
 - (ii) food and beverages consumed on the occasion when participation in a charitable, civic, or community event bears a relationship to the public officer's or public employee's office or employment or when the officer or employee is in attendance in an official capacity;
 - (iii) educational material directly related to official governmental duties;
 - (iv) an award publicly presented in recognition of public service; or
 - (v) educational activity that:
 - (A) does not place or appear to place the recipient under obligation;
 - (B) clearly serves the public good; and
 - (C) is not lavish or extravagant.

2-2-105. Ethical requirements for public officers and public employees. (1) The requirements in this section are intended as rules of conduct, and violations constitute a breach of the public trust and public duty of office or employment in state or local government.

(2) Except as provided in subsection (4), a public officer or public employee may not acquire an interest in any business or undertaking that the officer or employee has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by the officer's or employee's agency.

(3) A public officer or public employee may not, within 12 months following the voluntary termination of office or employment, obtain employment in which the officer or employee will take direct advantage, unavailable to others, of matters with which the officer or employee was directly involved during a term of office or during employment. These matters are rules, other than rules of general application, that the officer or employee actively helped to formulate and applications, claims, or contested cases in the consideration of which the officer or employee was an active participant.

(4) When a public employee who is a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority is required to take official action on a matter as to which the public employee has a conflict created by a personal or private interest that would directly give rise to an appearance of impropriety as to the public employee's influence, benefit, or detriment in regard to the matter, the public employee shall disclose the interest creating the conflict prior to participating in the official action.

(5) A public officer or public employee may not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when the officer or employee has a substantial personal interest in a competing firm or undertaking.

2-2-121. Rules of conduct for public officers and public employees. (1) Proof of commission of any act enumerated in subsection (2) is proof that the actor has breached a public duty.

- (2) A public officer or a public employee may not:
 - (a) use public time, facilities, equipment, supplies, personnel, or funds for the officer's or employee's private business purposes;
 - (b) engage in a substantial financial transaction for the officer's or employee's private business purposes with a person whom the officer or employee inspects or supervises in the course of official duties;
 - (c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from the officer's or employee's agency;
 - (d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any agency;
 - (e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which the officer or employee either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or
 - (f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom the officer or employee regulates in the course of official duties without first giving written notification to the officer's or employee's supervisor and department director.

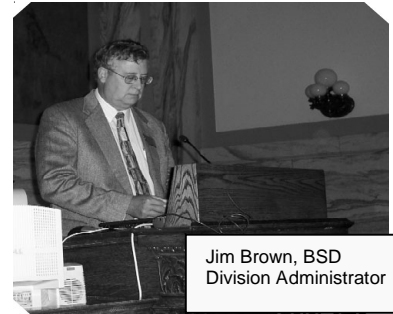
(3) (a) A public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:

- (i) authorized by law; or
 - (ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.
- (b) As used in this subsection (3), “properly incidental to another activity required or authorized by law” does not include any activities related to solicitation of support for or opposition to the nomination or election of a person to public office or political committees organized to support or oppose a candidate or candidates for public office. With respect to ballot issues, properly incidental activities are restricted to the activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations.
- (c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express personal political views.

Board Member Training - October 15, 2004



Program Specialist Lt. Governor Bolb Bureau Chief HCLB Bureau Chief
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Bill Burton, RPH.
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Greg Petesch,
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Kevin Braun, Chief
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Cynthia
Reichenbach,
Program Specialist

HCLB Bureau Chief
Lisa Addington



Gene Allison, BSD
Lead Attorney

mosaic

Research indicates that the most successful people are those who know themselves and develop strategies to meet the needs of specific situations.

Development Coach Wendy Samson, Professional Human Resource, began a series of Workplace Mosaic classes for the staff of HCLB and the Department of Labor and Industry. The classes were the beginning of a journey into the talent search and positive patterns of a persons' behavior. Commitment was recognized for organizational customer focus and continuous service improvement. The cohesive theme woven throughout the class was: "Good People, With Good Information – Make Better Decisions".

Attendees of Workplace Mosaic applied the principles of human interaction by combining service attitudes with external, internal and interdepartmental relationships. The process for improvement within our workplace and 'raising the bar' for customer satisfaction continues to be a group performance of new ideas and creativity.

Workplace Mosaic graduates from the HCLB included: Linda Grief, Sharon McCullough, Cheryl Brandt, Cheryl Smith, Mary Hainlin, Helena Lee, Joan Bowers, Becky Deschamps, LaVelle Potter, Liz Carney, Jennifer Billman, Ron Burns, Kris Cavazos, Brent Goetsch, Brent Jones, Cristina Medina, Sherri Staats, Cynthia Reichenbach, and Ken Threet.

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